IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID T. SHULICK : CIVIL ACTION NO. 02 cv 8483 INDIVIDUALLY AND ON BEHALF : CIVIL ACTION NO. 02 cv 1127

OF ALL OTHERS SIMILARLY : CONSOLIDATED

:

Plaintiff

: CLASS ACTION COMPLAINT

vs. : AND DEMAND FOR JURY TRIAL

CBC Companies, Inc. individually and

SITUATED

D/B/A CBCS and CBCS NATIONAL, : CLASS ACTION

INC. and Credit Bureau Collection : Services, Inc., individually and D/B/A : CBCS and CBCS NATIONAL, INC. :

ANDAND NOW, this day of

:

Defendant

ORDER

Summary Summary Judgment, Defendants responseSummary Judgment, Defendants response thereto,Summary MotionMotion for Summary Judgment and the supporting memoranda andMotion for Summar respective parties hereto, it is hereby entered against both Defendants jointlis hereby entered against both Defendants jointly and sever

AND NOW, this day of

AND NOW, this day of

Thousand (\$500,000) Thousand (\$500,000) in favorThousand (\$500,000) in favor of Plaintiff and the

24, 2003 and Defendants Cross Motion for Summary Judgment is denied.

" ItIt is further ORDERED that Plaintiff is directed tolt is further ORDERED that Plaintiff is directed told is further ORDERED that Plaintiff is directed told

' PlaintiffPlaintiff is further directed to submit to this Court for Plaintiff is further directed to sub

petitionpetition setting forth its fees and costs in apetition setting forth its fees and costs in accordance Federal Fair Debt Collection Practices Act, and

DefendantsDefendants are directed to within the next ten (10) days provide Defendants are directed useable eluseable electronic dauseable electronic data base of all the names and addresse Class for use in the sending of appropriate notice to the Class.

BY THE COURT:	
	T

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID T. SHULICK : CIVIL ACTION NO. 02 cv 8483 INDIVIDUALLY AND ON BEHALF : CIVIL ACTION NO. 02 cv 1127

OF ALL OTHERS SIMILARLY : CONSOLIDATED

SITUATED :

:

Plaintiff : CLASS ACTION COMPLAINT

vs. : AND DEMAND FOR JURY TRIAL

:

CBC Companies, Inc. individually and

Dated: December 17, 2003

D/B/A CBCS and CBCS NATIONAL, : CLASS ACTION

INC. and Credit Bureau Collection :
Services, Inc., individually and D/B/A :
CBCS and CBCS NATIONAL, INC. :

:

Defendant

SUR REPLY TO
DEFENDANTS RESPONSE TO PLAINTIFF S MOTION FOR
SUMMARY JUDGMENT
AND PLAINTIFF S RESPONSE TO DEFENDANTS
CROSS MOTION FOR SUMMARY JUDGMENT

ForFor the reasons For the reasons statFor the reasons stated in the attached Memorandum in Support of Defendants Defendants Response to Plaintiff's Motion for Summary Judgment and Defendants Response to Plaintiff's Motion CrossCross Motion for Summary Judgment, which is hereby incorporated by reference, PlCross Motion for Summary Judgment Summary Judgment should be granted and Defendant's Cross Motion for Summary Judgment.

By: ____/s/__ Edwin M. Goldsmith, III, Esq. Attorney ID No. 04429 Attorney for Plaintiff and the

Certified Class

1635 Market Street 19th Floor Philadelphia, PA 19103

(215) 563 4949

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID T. SHULICK : CIVIL ACTION NO. 02 cv 8483 INDIVIDUALLY AND ON BEHALF : CIVIL ACTION NO. 02 cv 1127

OF ALL OTHERS SIMILARLY : CONSOLIDATED

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CBC Companies, Inc. individually and

D/B/A CBCS and CBCS NATIONAL, : CLASS ACTION

INC. and Credit Bureau Collection :
Services, Inc., individually and D/B/A :
CBCS and CBCS NATIONAL, INC. :

:

Defendant

MEMORANDUM IN SUPPORT OF SUR REPLY TO
DEFENDANTS RESPONSE TO PLAINTIFF S MOTION FOR
SUMMARY JUDGMENT
AND
IN SUPPORT OF PLAINTIFF S RESPONSE TO DEFENDANTS
CROSS MOTION FOR SUMMARY JUDGMENT

I. Sur Reply

A.A. Defendants A. Defendants Had No Procedure to Protect AgainstA. Defendants Had No Procedure to Protect AgainstA.

the the context of the "bona fide the context of the "bona fide error" defense is the context of the "bona fide error" of toto determine, citing *Narwick v. Wexler*, 901 F. Supp. 1275 (N.D. Ill, 1901 F. Supp. 1275 (N.D. Ill, 1995). 9

("CBCS") argue that whether a party implemented sufficient procedures to argue that whether a party implement

involved involved the motion for involved the motion for summary judgment brought by a defendant who who so

of of the bona fide error defense, with the Court holding that the facts that he had asserted were insufficient to grant summary judgment.

testimonytestimony that the Defendants had no procedure whatsoever which would qualify as "reasonably adapted adapted to avoid any such error." It is important to note that it is the Defenda It is important to note burdenburden to prove "by a preponderance of evidence" that suchburden to prove "by a preponderance of evidence such "preponderance of the evidence" does not exist as a major forfor a jury to decide. This is especially so when the for a jury to decide occurred, occurred, CBC employee Michael Frabott, admitted that there was *no prno procedure procedure* whether a dollar amount appeared through the window of an envelope being sent to a debtor.

InIn the instant case, it is the Plaintiff who has shown iIn the instant case, it is the Plaintiff who has sl

"The "The witness was asked whether he put somebody at the end "The witness was asked whether he put once the envelope was stuffed and stamped and ready toonce the envelope was stuffed and stamped and is no dollar amount displayed in the window. His response was as follows:

- A. Yeah. Yeah. We ve we veYeah. We ve we ve aYeah. We ve we ve added to t looking for, if that s what you re asking for.
 - Q. Yes. And when did you do that?
 - A. When When this was When this was made when When this was made when I was made that in fact could be a violation.
 - Q. Okay.Okay. Would you agree then, thatOkay. Would you agree then, that there Okay. Very forfor this, the dollar amount showing through the window, for this, the dollar amount so of the lawsuit?
- MR. BRIGGS: objectionobjection to the form of the question. The witnessobjection to the testiftestified that estified that they had a procedure to check for things that were out of

¹ 15 USC §1692k(c)

ordinary.

MR.MR. GOLDSMITH only I only had that he checked for I only had that he checked for the address and checked whether here it was upside-down. But I am asking him whether, before the lawsuitlawsuit hit, did he have any procedure to check for lawsuit hit has a law and here have a lawsuit hit have a law and here have a lawsuit hit have a law and here have a lawsuit hit have a law and here have a law and

MR. BRIGGS: okay.

THE WITNESS: No.

(Frabott deposition, p. 64, ll. 7-24, p. 65, ll. 1-12.) (Emphasis added)²

MartinMartin Groves, who worked under the supervision of Michael Frabott,³ testified testified that the spot checking after the stuffing of letters into envelopes was completed was as follows:

- Q. When When the finished product -- i.e., the When the finished product -- i.e., the spitsspits out at the end of spits out at the end of the machine, did you institute any procedu those envelopes?
- A. Yes.
- Q. And what was that procedure?
- A. WeWe go over with the mail room operators, that when they areare pulling the mail of are pulling the mail off theare pulling the mathem as they re putting them into the trays to deliver.
- Q. What are they supposed to be spot checking for?
- A. Deliverable addresses.
- Q. Anything else?
- A. JustJust to make sure that it s consistent --Just to make sure that it s coreturn and a mailing address showing up in the window.
- Q. Nothing else?

² See Plaintiff s Memorandum in Support of Motion for Summary Judgment, p 16

³ Groves deposition, page 17, ll 20-21

Mr. Briggs: What do you mean by -- you say nothing else?

By Mr. Goldsmith:

- Q. That s your answer, then. Okay.
- Q. AfterAfter tAfter theAfter the event took place and you became aware event, event, did you initiate any new procedures, when the materialmaterial came out ofmaterial came out of thematerial came out of t its process through Pitney-Bowes machine?
- A. The The only thing that I -- that The only thing that I -- that The only thin instructed instructed them instructed them to be more aware of what to lool envelopes envelopes and envelopes and to brienvelopes and to bring any found.
- Q. Well, Well, what were they supposed -- what did you instruct them to be more aware of?
- A. Anything other than a return and mailing address.
- Q. AndAnd you instiAnd you instituted that policy only after the ecorrect?
- A. Yes.Yes. I told them to be more cognizant onYes. I told them to be looking for.

Groves deposition, page 29, lines 9-24 Page 30, lines 1-24, page 31, lines 1-12

Defendants Defendants Counsel then unsuccessfully attempted to change Mr. Grove s testimony.⁴ However, Defendants obviously chose to leave out the immediately following testimony:

Q. Okay.Okay. After the events and tOkay. After the events and the subsOkay. thatthat they wethat they were that they were more cognizant as to what to look for. D that testimony?

A. Correct.

⁴ See Defendant s Memorandum, page 16

Q. What What did, did you explain to What did, did you explain to them What did, did you ofof seeing something in the window other than the return address and the mailing address?

A. Yes, I did.

Q. Okay. Okay. However, both before and after the incident -- or, Okay. However, they they were still spot-checking to make sure that they just had the returthey were saddress and a mailing address?

A. Correct. That, that was showing.

Grove s deposition, page 44, lines 7-24 and page 45, line 1.

Defendants Defendants then make an incredible and blatantlyDefendants then make an incredible and blatan amountamount showing through the address window woamount showing that address address. If spotted by a CBC employee during the spot-checking process, the letteraddress. If spotted by a which which is what occurred in this case. "which is what occurred in this case." However, Mr. Groves clearly testified an instance where the dollar amount showed through.

Q. DoDo you recall any instancesDo you recall any instances where tDo you is throughthrough before -- and it was brought to your attook place?

A. No.

Grove s deposition, page 46, lines 21-24, page 47, lines 1 and 2.

Further, Further, Mr. Frabott testified that Further, Mr. Frabott testified that it was a misplaced bar code that alerted letter, making no mention whatsoever of an amount showing through the window.⁵

AliceAlice Bucy s testimony as to the proceduresAlice Bucy s testimony as to the procedures followedAl credible, credible, because she was obviously coached to testify to matters which she credible, because she

⁵ Frabott Deposition, Pages 60-61

knowledge.knowledge. On pages 41 and 42 of her deposition, her testimonyknowledge. On pages 41 and 4 seemingly knowledgeable testimony of the spot checking of envelopes is as follows:

- 16 Q. Did you personally observe
- 17 people spot-checking it?
- 18 A. No.
- 19 Q. Have you ever personally
- 20 observed people spot-checking?
- 21 A. No.
- Q. Where do you obtain your
- 23 information that these envelopes are,
- 24 or the documents are spot-checked?

0042

- 1 A. From the data center.
- Q. Who at the data center?
- 3 A. Mike Frabot and Marty
- 4 Groves.

The The absence of any company procedure was emphasized in the testimony The absence of any company professional of Collections Brian Collections Brian Striker of Collections Brian Striker o

Page 112 (August 26, 2002)

- Q. Is there a company policy where
- 4 letters are mailed back to the company to
- 5 see how they look in the mail?
- 6 A. No, there's no policy.
- 7 Q. So you simply did this on your

- 8 own without any company direction?
- 9 A. Correct.

Page 114 (August 26, 2002)

- 2 Q. Did you follow this procedure
- 3 with any of the 2,800 or so letters that
- 4 were sent out in this batch that are on
- 5 that list?
- 6 A. No.
- 7 Q. To your knowledge, anyone else
- 8 in the company do that?
- 9*** A. Not to my knowledge, no.

Page 116 (August 26, 2002) (emphasis added)

- 19 Q. Other than this handout that was
- 20 attached to the disclosures of all that's
- 21 sitting on a shelf somewhere in the
- 22 company, and these seminars or conferences,
- 23 and your just mailing stuff to yourself,
- 24 mailing collection letters to yourself,
- 25 were there any other procedures

Page 117 (August 26, 2002)

- 1 established, to your knowledge, by the
- 2 company to avoid violating this fair debt
- 3 collection law?
- 4 A. Not that I'm aware of.. (Emphasis added)

When When Mr. Striker was When Mr. Striker was recalled to testify on September When Mr. Striker was recalled procedure of mailing letters to procedure of mailing letters to himself was *much lessmuch less than per* that that included Letter Number 78, it only occurred on *one occasion* prior prior to the inception of this Action!

Page 51, September 25, 2003

17 Q. Your sending of the letters

- 18 to yourself in an envelope via United
- 19 States Postal Service, how often --
- 20 did that just occur with these
- 21 letters in Exhibit I?
- 22 A. Yes.
- Q. Did you ever do it again
- 24 after the year 2000?

Page 52

- 1 A. Yes.
- Q. When?
- 3 A. I'm looking. August of
- 4 2002.
- 5 Q. August of 2002. That was
- 6 after the letters were sent to
- 7 Mr. Shulick; isn't that correct?
- 8 A. Yes.
- 9 Q. So between October of the
- 10 year 2000 and August of 2002, you
- 11 didn't send any letters to yourself?
- 12 MR. BRIGGS: Actually,
- 13 previously, Ed, he said December of
- 14 2000.
- 15 MR. GOLDSMITH: Okay.
- 16 BY MR. GOLDSMITH:
- 17 Q. Between December of 2000
- 18 and August of 2002, you didn't send
- 19 any of the Letter Master letters to
- 20 yourself; is that true?
- 21 A. To the best of my
- 22 knowledge, yes. ⁶

Further, Further, a general policy to Further, a general policy to promote awareness of the FDCPA is not the

Joyner of this District had in mind when he stated the following:

The The fact that Mr. Needles has The fact that Mr. Needles has attended classes to educate himself as to The requirements requirements says nothing about the specirequirements ensure they complied with the FDCPA. The instant inquiry assensure they complied with the FDCPA.

⁶See Plaintiff's Memorandum in Support of Motion for Summary Judgment, p 20

collector collector is aware of collector is aware of the FDCPA's requirements, and concerns the p collector collector collector implements so that he complies with the FDCPA. *Adams v. TheAdams v. Offices of Stuckert & Yates, et al.*,926 F. Supp. 521, 529 (E.D.Pa. 1996)

Also, Also, in the most recent case of *Dechert v. Cadle Company*, 2003 U.S. Dist. LEXIS 20772 USDC SDSD SD InSD Indiana, Indianapolis Division) the Court underscored the concept that verbal training and periodic review of forms are not the procedures which are mandated by the statute.

InIn the affidavit of Daniel Cadle, defendanIn the affidavit of Daniel Cadle, defendant In the affidavit of terms, to the effecterms, to the effecterms, to the effect that employees of The Cadle Company a training training on the requirements of training on the requirements of the FDCPAtraining on the requirements completed to assure compliance. The defendant portrays trompleted to assure compliance. The shieldshield those who simply misunderstand the obligious and procedures and procedures an error occurred. [*12] How shieldshield those who simply misunderstand the obligious Clark Clark v. Clark v. Priority Financial Services, Inc., 2001 U.S. Dist. LEXIS 16900, 2001 WL 11551521155152 (S.D. Ind.1155152 (S.D. Ind. September 8, 2001); Bawa v. 20012001 U.S. Dist. LEXIS 782001 U.S. Dist. LEXIS 7842, 2001 WL2001 U.S. Dist. LEXIS 7842, 2 Further, Further, the defendant offers no evidence of what the policies and procedures in place were designed to ItsIts assertions are muchIts assertions are much more broad and ambiguous in nature. The Camerelymerely asserting, merely asserting, in general, that it attempts to make sure it is in compliance with the FDCPA.

Finally, Finally, Mr. Manuel Newburger's alleged expert opinions on the subject areFinally, Mr. Manuel National Procedure (190) and this case, are worthless and should be ignored. Federal Rule of Civil Procedure (26) (2) (A) in this case requires requires that all expert reports be served no later than ninety (90) days before requires that all expert report otherwise agreed to by all parties or ordered by the Court in a Rule 16 Schashas ordered that the trial in this case is scheduled for February 2, 2004. Despihas ordered that the trial in the Defendants Defendants served a report on November 28, 2003, Defendants ser

datesdates for the expert s deposition. These issues related to Rule 26 non-compliance by defendant, werewere addressed immediatelywere addressed immediately by plwere addressed immediately by plaintiff s inincoincorporated incorporated herein as Exhibit A . Despite this notice, Defendants have taken no steps to sa a signed report as igned report and have attached an unsigned report to their a signed report and have attached an unsigned report to their as Plaintiff's counsel witnessed such Rules of Civil Procedure.

Without Waiver of the foregoing, the arguments assertedWithout waiver of the foregoing, the arguments principles of Federal Rules 701 and 702 and principles of Federal Rules 701 and 702 and 702 and 702 and 703 and 704 and 705 and

Federal Rules of Evidence 702 provides

If scientific, technical or other specialized knowledge assists the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The The United States Supreme The United States Supreme Court in *Daubert* case, specifically held under F that that the trial judge must ensure that the trial judge must ensure that anythat the trial judge must ensure that a relevant, relevant, but reliable. Id. at 589. The Court found that the word knowledge as relevant, but requires requires more quires more than surequires more than subjective belief or unsupported speculation. Id a testimonytestimony must be an appropriate validation i.e., good grounds, based ontestimony must be an appropriate validation, the Supreme Court held that the Rule 702 addition, addition, addition, to the pertinent inquiry as a precondition to admissibility connection to the pertinent

determine at the outdetermine at the outset whether the expert proposing to underline assist the trier of fact to understand or to determine the fact in issue.

The The unsigned, non-compliant The unsigned, non-compliant report offered by Defendants in The unsign standard and Rule 702 as follows:

- a. The report does not assist this Court or jury to determine any fact in issue;
- b. The report an the opinions expressed in the report are pure speculation;
- C. Mr.Mr. Newburger, theMr. Newburger, the report s author, without signing the same,Mr. Newburger. Honorable Court s authority as the trial judge in this litigation.

B.B. There could not have been any procedure in place to detect violations of the There could not have been a pointpoint of stuffing the envelopes, because of point of stuffing the envelopes, because of the manifest lack of know persons charged with sending out correct mailings.

DefendantsDefendants make a large point that whether or not the employees at the **CBC** data center data center we checking the envelopes had knowledge of checking the envelopes had knowledge of the FDCPA is not released bothboth the same before and after the event and that the procedures in place in fact caught the error.

However, this argument completely ignores the language of the statute that states:

(c)(c) Intent. A debt collector may not be held liable in any action brought under this title [15 USCSUSCS §§§§ 1692 et USCS §§§§ 1692 et seq.] if USCS §§§§ 1692 et seq.] if the debt collector shows by a probable violation was not intentional and resthe violation was not intentional and resulted frothe violation was not maintenance of procedures reasonably adapted to avoid any smaintenance of procedures reasonably adapted.

HowHow can allow can a procedure be reasonably adapted to avoid error under the FDCPA be maintained in in charge of its maintenance are completely ignorant of what in charge of its maintenance are completely in Defendants Defendants argument simply is nonsensical. Further, the so-called Defendants barbar code, not the bar code, not the error in the FDCPA. See Frabott Deposition, Page 60. bar code, not the error in the FDCPA.

barbar code, she inadvertently and without realizing it also corrected the FDCPA problem. See Bucy Deposition, Pages 53 and 54. Accordingly, the lack of knowledge Deposition, Pages 53 and 54

C. Plaintiff's Request for \$500,000.00 in damages should be granted.

InIn this case, Plaintiff is demanding damages in the amount of \$500,000.00In this case, Plaintiff is 1515 USCA 1692k(a)(2)(B) for a 15 USCA 1692k(a)(2)(B) for a class numbering 2,889 members. Defendants co basedbased on a false assumption, found nowhere based on a false assumption, found nowhere in Plaintiff's Memorassumes assumes that each class member would be entitled assumes that each class member would be entitled to the byby the statutory cap to \$500,000.00. Quite the conby the statutory cap to \$500,000.00. Quite the contrary, entitledentitled to the total amount entitled to the total amount permitted by \$500,000.00.\$500,000.00. Five Hundred Thousand Dollars\$500,000.00. Five Hundred Thousand Dollars (\$500,000.00.500,000.00.500,000.00.) Five Hundred Thousand Dollars (\$500,000.00.500,000.00.) Five Hundred Thousand Dollars (\$500,000.00.500,000.00.)

Therefore, Therefore, Defendant's assumption that \$500,000.00 is an amount only to be awarded in an egregious case is inconsistent with the fact tegregious \$500,000.00,\$500,000.00, will receive \$500,000.00, will receive only \$500,000.00, will receive \$500,000.00, will receive only \$500,000.00, will receive \$500,0

(D.Or.(D.Or. 1981) for the proposition that only(D.Or. 1981) for the proposition that only aggravated cases of personal content of the proposition meritmerit \$1,000.00 of damages, but the \$500.00 awarded to the individual in that case is farmerit \$1,000.00 of d whatwhat these individuals in the instantwhat these individuals in the instant casewhat these individuals in the in \$500,000.00\$500,000.00 to the\$500,000.00 to the class. Therefore, the *Harvey* case is of no support to case is o DefendantsDefendants cite Kobs v. Arrow Kobs v. Arrow ServicKobs v. Arrow Service Bureau, 134 F.3d 39 DefendantsDefendants as 2002] and Sibley v. DeKalb Collection Service, 67 F.2d, 67 F.2d 830 (11th Circuit, 198) thethe proposition that even if this Courtthe proposition that even if this Court finds summary judgment, thethe prototo a jury. Neither of these cases resulted in such a holding, and neither of these cases involved the situationsituation where a court had situation where a court had already determined summary judgment on the issu byby nature of the statute, are intermixed with the factors necessary for determination of damages. For example, it would be an illogical resultexample, it would be an illogical result ifexample, it would be an illogical thatthat an error occurred for which thethat an error occurred for which there was no defenthat an error occu preventprevent such error, and then a prevent such error, and then a jurprevent such error, and then a jurprevent committed committed in error. Clearly in a situation such committed in error. Clearly in a situation such as summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where there has been summary judgment in a situation where the situation is a situation where the situation where the situation is a situation where situation is a situa failed failed to failed to maintain procedures which failed to maintain procedures which would be reasonably adapted bebe an inconsistent result, and certainly not intended by statute, that the jury would comebe an nono lino liabno liability because the act was not intentional. Such a result would render meaningless the provisions provisions requiring a showing byprovisions requiring a showing by the preponderance of the evidence t procedures reasonably adapted to preventing the error in the first place.

Further, Further, it makes no sense to interpretFurther, it makes no sense to interpret thFurther, it makes findingfinding of summary judgment of liftinding of summary judgment of liability, to

damages damages should be awarded. If such determination amages should be awarded. If such determination is perfectly the the requirements which the Defendants must meet in order to successfully sustain athe requirements which the defense.

Further, Further, in Further, in this case Further, in this case Defendants have admitted to sending out 2,889 less statute⁷ which is certainly not a small number of persons which is certainly not a small number of persons who suffiched the result of Defendants failing to have a preventative procedure in place. Further, in this case Defendants have admitted to sending out 2,889 less than the state of the person of th

II. Defendant CBC s Cross Motion for Summary Judgment Should Be Denied.

ItIt wasIt was only when **CBC** was completely unmasked inwas completely unmasked in the depositions of Merabott, Frabott, Groves and FaehnlFrabott, Groves and Faehnle as an activeFrabott, Groves and Faehnle as a PlaiPlaintiff Plaintiff and the Class that it now argues that it was a mere service provider for its substitution of the FDCPA. No such affirmative defending in its Answer. If such an argument was accepted, this would absolutely gut the statutin its Answer. If such an argument corporation could form a subsidiary parent corporation could form a subsidiary parent corporation could form a subsidiary parent corporation could violate the provisions of the Fair Debt Collection Practices Act.

Further, Further, in all the cases cited in this section, nowhere does such a Further, in all the cases cited in this is a parent subsidiary relationship between the parties, such that the parties aparent subsidiary relationship between the parties, such that the parties aparent subsidiary designated as material, as opposed to the wholly owned subsidiary designated as

⁷ Defendant s Memorandum, Page 17

exonerated from Fair Debt Collection Practice Act violations.

The The case of The case of Jenkins v. Heintz, 25 F.3d, 25 F.3d, 536, 538-39 (7th Cir. 1994) is cited for the protect that that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine determine whether it is that it is the Defendant's activities that determine determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the Defendant's activities that determine whether it is that it is the De

Further, Further, there is a host of credible evidence that **CBC** had virtually complete economic and transactional contransactional control over **CBCS** in order to make **CBC** life FDCPA. FDCPA. On Page 13 of Defendant's memorandum, a full discusFDCPA. On Page 13 of Defendant's employee, employee, James Faehnle, participated in a review processemployee, James Faehnle, participated in replacedreplaced with a one-windowed envelope. This participation was replaced with a one-windowed envelope. not only Mr. Faehnle but also **CBCS** employees.

AndAnd if there is any question as to whether **CBC** controls **CBCS**, one need only read through thethe deposition of Mr. Dirk Cantrell, which Defethe deposition of Mr. Dirk Cantrell, which Defethe deposition example, example, Mr. example, Mr. Cantrell testifies that he currently holds the office of controller a ttreasurer reasurer of **CBC** (Cantrell deposition, Page 15, Lines 4-6). He also admits that he is S (Cantrell deposition of **CBCS**, and that he continues to hold, and that he continues to hold that position. See Cantrell depositions 9-21.

Mr.Mr. Cantrell identified Larry Ebert asMr. Cantrell identified Larry Ebert as the President of CBCS. See 15,15, Lines 22-25, Page 16, Line 1. 15, Lines 22-25, Page 16, Line 1. Mr. Ebert indicated in his deposition taken of thatthat he was also Senior Vice President of CBC. See Ebert. See Ebert deposition. See Ebert deposition dated Set 33-3433-34 excerpts of which are attached hereto as Exhibit "B" and incorporated herein b33-34 excerpts of whom Mr. Cantrell also testified that he reports to William H. Price. CantrellMr. Cantrell also 8-14.8-14. 8-14. Mr. Cantrell identified William H. Price as the President of CBC. Cantrell De 31,31, Il 8-9. Mr. Cantrell also admitted that for the year 2002 as31, Il 8-9. Mr. Cantrell also admitted that for the year diddid not report to anybody. Cantrell deposition, Page 19, Linesdid not report to anybody. Cantrell deposition, notnot report to Mr. Ebert. Mr. Ebert indicated too reports to Mr. Price. See Ebert deposition, pp. 33-34.

Mr.Mr. CantrellMr. Cantrell also testified that the stock of Credit Bureau Collection Services, Inc. isMr. Cabby CBC. Page 20, Lines 17-25. He also testified as follows as to the purpose of forming CBCS:

Q: So,So, is it then your testimony that one ofSo, is it then your testimony that one of the purpose CollectionCollection Services, Inc. was to protect against liability undCollection Services, Collection Practices Act?

A: Yes.

Cantrell deposition, Page 25, Lines 4-8.

Mr.Mr. Cantrell also testified that before **CBCS** was formed, **CBC** was i was involved was involved in DebtDebt Collection and the recipient of a suitDebt Collection and the recipient of a suit against it for violation of Page 27, Cantrell deposition, Lines 8-15.

When When asked if the direct When asked if the directors of **CBCS** for the year 2002, Mr. Cantrell resonances william B. Price and names William B. Price and William H. Price. Cant askedasked who the directors of **CBC** were as of 2002, Mr. Cantrell replied, "William B. Price, William William H. Price, Benjamin B. Price, Jonathan William H. Price, Benjamin B. Formaliar ties such as father/son. Cantrell deposition, Page 30, Lines 6-15.

Mr.Mr. CanMr. CantMr. Cantrell also testified that in the year 2002 **CBCS** did not hold any corporate me where Minutes were taken, norwhere Minutes were taken, nor did they hold any such meetings for the year 2001

When When Mr. Cantrell was asked how the proportionate share of office expenses waWhen Mr. Cantrell was assas between **CBC** and **CBCS**, he indicated that, he indicated that the proportion was based, he indicated that the basedbased on the amount of office space. No rent wbased of deprecation expense. Cantrell deposition, lines 1-19, page 44

When When Mr. Cawhen Mr. Cantrell When Mr. Cantrell was When Mr. C

WhWhenWhen askWhen asked to describe the services that CBCS received for the 6 percent, Cantrell a

reiteratedreiterated management expertise, accountingreiterated management expertise, accounting expertise, reiter 54, lines 6-13

Although Although Credit Bureau Collection Services, IncAlthough Credit Bureau Collection Services, withdrawals withdrawals from the account according to Mr. Cantrell to reison its behalf. Cantrell deposition, page 56, lines 6-13

PayrollPayroll is handled directly through CBC thrthrough athrough a central payroll account. Ca deposition, page 57, lines 7-13

EvenEven insurance is allocated among the Even insurance is allocated among the subsidiaries. The Even in deposition, page 58, lines 20-25

DividendDividend paymentsDividend payments by **CBCS** were up streamed to **CBC** occurred in year 200 surplussurplus available in **CBCS** at that time. Cantrell at that time. Cantrell deposition, page 90, lines 7 and 12. susurplussurplus availabsurplus available in 2001, and therefore no dividend. Cantrell deposition, page 90, line CantrellCantrell further explained that although on the booksCantrell further explained that although on the booksCantrell further explained that although on the books inin the company at the end of the year was tied up between cash and accounts receivabin the company at the dividend was calculated at that time. Cantrell deposition, page 91, lines 2-6.

It is obvious from the above testimony that It is obvious from the above testimony that CBCS was formed purposepurpose of attempting to shield the Pripurpose of attempting to shield the Price fapurpose of attempting underunder the complete control of offunder the complete control of officers of CBCCBC and functions with finances or expenses, the latter of which are determined *ad hoc* for the convenience of CBC.

Further, Further, Exhibit C-7 and Exhibit C-2 of the Cantrell depositFurther, Exhibit C-7 and Exhibit Memorandum, Memorandum, make Memorandum, make it clear that the very letter sent to the class was on letter

owned exclusively by CBC and therefore sent to Plaintiff and the class by CBC.

III. Conclusion

ForFor the forgoing reasonsFor the forgoing reasons Plaintiff's MotionFor the forgoing reasons Plaintiff

Defendants cross motion for Summary Judgment should be denied.

Respectfully submitted,

/s/

Edwin M. Goldsmith, III, Esquire Counsel for Plaintiff and the Certified Class

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID T. SHULICK : CIVIL ACTION NO. 02 cv 8483

INDIVIDUALLY AND ON BEHALF : CIVIL ACTION NO. 02 ev 1127

OF ALL OTHERS SIMILARLY : CONSOLIDATED

SITUATED :

:

Plaintiff :

: CLASS ACTION COMPLAINT

vs. : AND DEMAND FOR JURY TRIAL

:

CBC Companies, Inc. individually and

D/B/A CBCS and CBCS NATIONAL, : CLASS ACTION

INC. and Credit Bureau Collection :

Services, Inc., individually and D/B/A:

CBCS and CBCS NATIONAL, INC. :

:

Defendant :

CERTIFICATE OF SERVICE

I,I, Edwin M.I, Edwin M. Goldsmith, III, Esq., hereby certify that a trueI, Edwin M. Goldsmith, III, Esq., hereby ReplyReply Reply ToReply To Reply To DefendaReply To Defendants Response to Plaintiff's Motion for Summatoto Defendant's Cross Motion for Summary Judgment was filed today and to Defendant's NormanNorman W. Briggs, Esq., viaNorman W. Briggs, Esq., via regular first class US mail, on today's date a

Norman W. Briggs, Esq. Frey, Petrakis, Deeb, Blum, Briggs & Mitts, P.C. 1601 Market Street, Suite 2600 Philadelphia, PA 19103

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December 17, 2003	
	By:/s/
	Edwin M. Goldsmith, III, Esq.
	Attorney ID No. 04429
	Attorney for Plaintiff